

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5711

PETITION OF STEVEN P. AND MIRIAM G. GOLDBERG

(Hearing held February 13, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, March 14, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a)(1) and 59-C-1.323(b)(1). The petitioners propose to construct two second-story additions that require variances of nine (9) feet as the addition is within sixteen (16) feet of the sidestreet setback (44th Street) and of one (1) foot as the addition is within six (6) feet of the side lot line. The required sidestreet setback is twenty-five (25) feet and the required side lot line setback is seven (7) feet.

The subject property is Lot 5, Block 3, John L. Warren's Addition to Chevy Chase Subdivision, located at 4401 Leland Street, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00471827).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct two second-story additions at the eastern and the northwest sections of the existing residence. The property is located at the intersection of Leland and 44th Streets.
2. The petitioner testified that the residence was built in 1926 and that the existing house is sited the setback, necessitating the need for the variances. The petitioner testified that the proposed construction would not expand the existing footprint of the house.
3. The petitioner testified that the windows planned for the second-story addition at the northwest section of the residence would be eye-level only and would not significantly impact the privacy of the adjoining neighbor on Lot 4. The petitioner further testified that she has spoken with her neighbors and that her neighbors support the variance request as evidenced by the letters of support entered into the record as Exhibit Nos. 8(b) through 8(g).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner proposes to construct two second-story additions on a residence that has existed since 1926. The existing residence is located in the setbacks. The proposed construction will not expand the footprint of the existing house. The Board finds that these are exceptional circumstances that are unique to property.

The Board observes that these findings are consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of two second-story additions are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no correspondence or testimony in opposition to the variance request. The record contains several letters of support from the adjoining and confronting property owners. See, Exhibit Nos. 6(b) through 6(g). The Board finds that the proposed construction would not materially effect the privacy of the most impacted adjoining neighbor and will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of nine (9) feet from the required twenty-five (25) foot sidestreet setback and of one (1) foot from the required six (6) foot side lot line setback for the construction of two second-story additions are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(b) and 5(a) through 5(g).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution. Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 14th day of March, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

